

County Line Cheese Company, a Division of Beatrice Foods Co. and United Food & Commercial Workers Union, Local 1059, AFL-CIO, Petitioner. Case 8-RC-12423

December 16, 1982

DECISION AND ORDER DIRECTING HEARING

Pursuant to authority granted it under Section 3(b) of the National Labor Relations Act, as amended, the Board has considered objections to an election held on May 8, 1981,¹ and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs filed by the Employer and the Petitioner, and hereby adopts the Regional Director's findings and recommendations,² as modified herein.

On either May 5 or 6, 1981, the Employer's plant manager called a meeting of all employees and distributed new employee handbooks which set forth wages and benefits provided by the Employer. During this meeting the plant manager distributed two letters written by attorneys.

The Petitioner objected to the following statement in one of the letters, alleging it was a misrepresentation of law:

However, you should make them [employees] aware of the fact that, if the union gets a majority of the votes cast in this election, it will be extremely difficult, if not impossible, to ever get the union out of their plant. If the union loses, it will always be willing to come back and try again another year. *However, if it wins, it is virtually impossible to ever get the union out.* I have had personal experience in a case where almost every employee in the bargaining unit signed a request for an election to decertify the Union. However, because of a technical mistake they made in the proceedings, the NLRB would not even let them have the election. [Emphasis supplied.]

The Regional Director concluded that the statement was objectionable under the rationale of *Robbins & Myers, Inc.*, 241 NLRB 102 (1979), because the Employer failed to allude to the employees' right to decertify a union after conveying the impression that the employees had little or no recourse against a union with which they had become dissatisfied. Rather than set the election

aside based on the single misrepresentation, the Regional Director recommended that the issue of law raised by this statement be set for hearing to be considered in conjunction with the issues raised by the Petitioner's Objections 1 and 5.³

In *Affiliated Midwest Hospital Incorporated, d/b/a Riveredge Hospital*, 264 NLRB 1094, issued September 30, 1982, we held that misrepresentation of the Board's processes was not objectionable conduct warranting the setting aside of an election, overruling *Formco, Inc.*, 233 NLRB 61 (1977), and *Kinney Shoe Corporation*, 251 NLRB 498 (1980). Accordingly, we find that the statement in this case is not objectionable and the issue need not be set for hearing.⁴

ORDER

It is hereby ordered that a hearing be held before a duly designated hearing officer for the purpose of receiving evidence on the issue of whether an agent of the Employer interrogated an employee regarding a union meeting, whether the Employer threatened to turn the plant into a warehouse, and whether the Employer extended the period for which a shift premium would be paid within the critical period before the election.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issue. Within 10 days from the date of issuance of such report, either party may file with the Board in Washington, D.C., eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof on the other party and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the hearing officer.

³ We agree with the Regional Director's recommendation that the Petitioner's Objection 1 alleging Employer interrogation of an employee, and Objection 5 asserting that the Employer threatened to turn the plant into a warehouse, raise issues of fact and/or credibility and should be set for hearing.

We also agree with the Regional Director's recommendation to set for hearing part of the Petitioner's Objection 8 alleging that within the critical preelection period the Employer extended by 59 minutes the time for which a shift premium would be paid.

⁴ Members Fanning and Jenkins, who dissented in *Riveredge Hospital, supra*, would find that the Employer's statement is objectionable. Members Fanning and Jenkins also find objectionable the following statement found in the same letter:

You and your employees should also be aware of the fact that, if you trade your handbook for a typical standardized Union contract, you will probably not be able to continue to enjoy some of the innovative and somewhat relaxed practices that you now enjoy.

They would set the election aside on the basis of these objections.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 14 votes for and 23 votes against the Petitioner. There were no challenged ballots.

² In the absence of exceptions we adopt *pro forma* the Regional Director's recommendations that the Petitioner's Objections 2, 3, 4, 6, 9, and 10 be overruled.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to the Regional Director for Region 8 for the purpose of conducting such hearing, and that the Regional Director be, and he hereby is, authorized to issue notice thereof.